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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 ROBERT LORENZA CREWS,

8 Petitioner,

v.

9 JEFFERERY PERKINS,

10 Respondent.

Case No. 3:24-cv-05714-BHS-TLF

REPORT AND
RECOMMENDATION

Noted for January 23, 2025

11 Petitioner Robert Lorenza Crews, a prisoner at Coyote Ridge Corrections Center,
12 has filed a petition for writ of *habeas corpus* under 28 U.S.C. § 2254. Dkt. 3. Mr. Crews
13 seeks relief from his 2010 conviction and sentence for first degree rape of a child. *Id.* at
14 3; Dkt. 13-1 (Relevant State Court Record), Exhibit 1 (Judgment and Sentence, *State v.*
15 *Crews*, Pierce County Cause No. 10-1-00454-0).

16 Mr. Crews presents the following five grounds in his petition:

17 1. Violation of Separation of Powers – Prosecuted under unconstitutional statute

18 RCW 9A.44.020(1) and House Bill 208 (1975).

19 2. Violation of Privileges and Immunities Clause. Prosecuted under

20 unconstitutional statute RCW 9A.44.020(1), House Bill 208 (1975).

21 3. Violation of Equal Protection Clause – Prosecuted under unconstitutional

22 statute RCW 9A.44.020(1) House Bill 208 (1975).

23 4. Bill of Attainder – violation of Article 1, § 9 Clause 3 of the United States

24 Constitution. Art 1, § 10, Clause 1.

5. Ineffective Assistance of Counsel.

Dkt. 3, at 6-10.

Mr. Crews has requested an evidentiary hearing in this matter to review his conviction. Dkt. 3, at 3-5. The request for an evidentiary hearing should be DENIED, and the petition should be DISMISSED as time-barred. The certificate of appealability (COA) should be DENIED.

The Washington State Court of Appeals, Division II summarized the facts of the case in its unpublished decision affirming the conviction on direct appeal. Dkt. 13-1 at 21-25 (State's Exhibit 2, Unpublished Opinion, *State v. Crews*, Washington State Court of Appeals Div. II, Cause No. 41517-8-II (Ct. App. May 22, 2012)). The trial facts are not relevant to the issues presented in this habeas corpus case and therefore are not discussed.

I. DISCUSSION

A. State Court Procedural History

On October 18, 2010, a jury convicted Mr. Crews of first-degree rape of a child. Dkt. 13-1, at 2-19 (State's Exhibit 1, Judgement and Sentence, *State v. Crews*, Pierce County Cause No. 10-1-00454-0). Mr. Crews appealed his conviction to the Washington Court of Appeals; on May 22, 2012, the Washington Court of Appeals affirmed. Dkt. 13-1, at 2-19 (State's Exhibit 2, Unpublished Opinion, *State v. Crews*, Court of Appeals Cause No. No. 41517-8-II (Ct. App. May 22, 2012)). The Washington Supreme Court denied review without comment on October 10, 2012. Dkt. 13-1, at 64 (State's Exhibit 5, *State v. Crews*, 175 Wash.2d 1015 (2012)).

The Court of Appeals issued a final mandate on October 31, 2012. Dkt. 13-1, at

1 66 (State's Exhibit 6, *State v. Crews*, Court of Appeals Cause No. No. 41517-8-II (Ct.
2 App. Oct. 31, 2012)). Mr. Crews did not file a petition for writ of certiorari with the
3 Supreme Court.

4 In September 2021, Mr. Crews filed a post-conviction motion in Pierce County
5 Superior Court. Dkt. 13-1 at 69 (State's Exhibit 7, Motion to Modify or Correct Judgment
6 and Sentence, Pierce County Cause No. 10-1-00454-0). The Superior Court transferred
7 Mr. Crews' motion to the Washington Court of Appeals for consideration as a personal
8 restraint petition. Dkt. 13-1 at 89-91 (States' Exhibit 8, Order on Defendant's Motion to
9 Modify Judgment and Sentence, Pierce County Cause No. 10-1-00454-0).

10 The Washington Court of Appeals dismissed the personal restraint petition as
11 untimely under state law. Dkt. 13-1 at 93-94 (State's Exhibit 9, Order Dismissing
12 Petition, Court of Appeals Cause No. 56277-4-II). Mr. Crews did not seek review by the
13 Washington Supreme Court, and the Washington Court of Appeals issued a certificate
14 of finality on March 22, 2022. Dkt. 13-1 at 96 (State's Exhibit 10, Certificate of Finality,
15 Court of Appeals Cause No. 56277-4-II).

16 Mr. Crews filed another post-conviction motion in Superior Court on September
17 12, 2022. Dkt. 13-1 at 99 (State's Exhibit 11, Motion for Order to Show Cause re:
18 Vacation of Judgment/Order, Pierce County Cause No. 10-1-00454-0). The Superior
19 Court again transferred the motion to the Washington Court of Appeals for consideration
20 as a personal restraint petition. The Washington Court of Appeals dismissed the
21 personal restraint petition as time barred under state law. Dkt. 13-1 at 206-208 (State's
22 Exhibit 15, Order Dismissing Petition, Court of Appeals Cause No. 57442-0-II). Mr.
23 Crew sought review by the Washington Supreme Court. Dkt. 13-1 at 210-242 (State's
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1 Exhibit 16, Motion for Discretionary Review, Supreme Court Cause No. 101926-2). The
2 Washington Supreme Court denied review. Dkt. 13-1 at 244-245 (State's Exhibit 17,
3 Ruling Denying Review, Supreme Court Cause No. 101926-2). The Washington Court
4 of Appeals issued the certificate of finality on June 23, 2023. Dkt. 13-1 at 247 (State's
5 Exhibit 18, Certificate of Finality, Court of Appeals Cause No. 57442-0-II).

6 Mr. Crews filed another personal restraint petition in November 2023 directly in
7 the Washington Supreme Court. Dkt. 13-1 at 280-319 (State's Exhibit 24, Personal
8 Restraint Petition, Supreme Court Cause No. 102557-2; Exhibit 25, Motion: Release
9 from Confinement, Supreme Court Cause No. 102557-2). The Washington Supreme
10 Court transferred the personal restraint petition to the Washington Court of Appeals for
11 initial consideration. Dkt. 31-1 at 321 (State's Exhibit 26, Letter from Supreme Court,
12 dated November 14, 2023). The Washington Court of Appeals dismissed the personal
13 restraint petition as time barred under state law on July 1, 2024. Dkt. 31-2 at 1-4 (Order
14 Dismissing Petition, Court of Appeals Cause No. 59768-3-II).

15 In February 2024, Mr. Crews filed a fourth personal restraint petition in the
16 Washington Court of Appeals. Dkt. 13-2 at 6-25 (State's Exhibit 31, Personal Restraint
17 Petition, Court of Appeals Cause No. 60080-3-II). The Washington Court of Appeals
18 dismissed this personal restraint petition as time barred under Washington law, on June
19 28, 2024. Dkt. 13-2 at 178-180 (State's Exhibit 35, Order Dismissing Petition, Court of
20 Appeals Cause No. 60080-3-II).

21 Mr. Crews then sought review by the Washington Supreme Court of the
22 dismissal of his personal restraint petitions. Dkt. 13-2 at 182-206 (State's Exhibit 36,
23 Motion for Discretionary Review, Supreme Court Cause No. 103253-6). The

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1 Washington Supreme Court denied review on August 5, 2024. Dkt. 13-2 at 208-211
2 (State's Exhibit 37, Ruling Denying Review, Supreme Court Cause No. 103253-6 and
3 103256-1).

4 Mr. Crews filed his federal habeas corpus petition on August 29, 2024. Dkts. 1,3.

5 B. Time Bar under 28 U.S.C. 2254 (d)(1)

6 Respondent argues the petition is untimely under 28 U.S.C. § 2244(d)(1) and, as
7 such, should be dismissed. Dkt. 12. Mr. Crews did not object to the timeline described
8 above. Dkt. 14.

9 The writ of habeas corpus affords relief to persons in custody pursuant to the
10 judgment of a state court in violation of the Constitution, laws, or treaties of the United
11 States. 28 U.S.C. §§ 2241(c)(3), 2254(a). Petitions for habeas corpus are governed by
12 the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 28 U.S.C. § 2244.
13 Whether a petition is barred by the statute of limitations is a threshold issue that must
14 be resolved before considering other procedural issues or the merits of individual
15 claims.

16 The AEDPA imposes a one-year limitation period, which begins to run "from the
17 latest of ... the date on which the judgment became final by the conclusion of direct
18 review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A).

19 The limitation period may run from a later date under the following
20 circumstances: First, it may run from the date on which the impediment to filing an
21 application created by State action in violation of the Constitution or laws of the United
22 States is removed if the applicant was prevented from filing by such State action. 28
23 U.S.C. § 2244(d)(1)(B); second, it may run from the date the United States Supreme
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1 Court recognizes a new constitutional right that the Supreme Court makes retroactive to
2 cases on collateral review. 28 U.S.C. § 2244(d)(1)(C); third, it may run from the date the
3 factual predicate of the claim presented could have been discovered through the
4 exercise of due diligence. 28 U.S.C. § 2244(d)(1)(D).

5 Additionally, “[t]he time during which a properly filed application for State post-
6 conviction or other collateral review with respect to the pertinent judgment or claim is
7 pending shall not be counted toward any period of limitation under this subsection.” 28
8 U.S.C. § 2244(d)(2) (emphasis added). For purposes of 28 U.S.C. § 2244(d)(1)(A),
9 direct review usually concludes and the judgment becomes final either upon the
10 expiration of the time for filing a petition for writ of certiorari with the United States
11 Supreme Court, or when the Court rules on a timely filed petition for certiorari. *Bowen v.*
12 *Roe*, 188 F.3d 1157, 1158-59 (9th Cir. 1999).

13 In this case, the Washington Supreme Court denied review of the direct appeal
14 on October 12, 2012. Mr. Crews had ninety days from October 12, 2012, to file a
15 petition for writ of certiorari with the Supreme Court. See S. Ct. Rule 13. Mr. Crews did
16 not file a petition by January 8, 2013. The direct review was concluded and judgment
17 became final on January 8, 2013, for purposes of 28 U.S.C. § 2244(d)(1)(A). The
18 AEDPA’s one-year statute of limitations began to run the following day. *Id.*

19 The AEDPA statute of limitations ran out on January 8, 2014. 28 U.S.C. §
20 2244(d)(1)(A). By the time Mr. Crews filed his first personal restraint petition, the statute
21 had been expired for seven years. Mr. Crews’ personal restraint petition was dismissed
22 as untimely. In any case, its filing had no effect on the Section 2244 statute of
23 limitations. See *Pace v. DiGuglielmo*, 544 U.S. 408, 416 (2005) (filing of untimely state
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1 court application for collateral review does not toll the statute of limitations for filing a
2 federal habeas petition under 28 U.S.C. 2244(d)(2)).

3 When Mr. Crews filed his federal habeas corpus petition in August of 2024, more
4 than ten years had passed since his AEDPA statute of limitations ran out.

5 The statute of limitations governing federal habeas petitions is subject to
6 equitable tolling in appropriate circumstances. *Holland v. Florida*, 560 U.S. 631, 652
7 (2010). The Ninth Circuit has made clear that equitable tolling is justified in very few
8 cases, noting that “the threshold necessary to trigger equitable tolling [under AEDPA] is
9 very high, lest the exceptions swallow the rule.” *Miranda v. Castro*, 292 F.3d 1063, 1066
10 (9th Cir. 2002).

11 A petitioner bears the burden of showing that equitable tolling should be applied.
12 *Id.* at 1065. In order to receive equitable tolling, a petitioner must show “‘(1) that he has
13 been pursuing his rights diligently, and (2) that some extraordinary circumstance stood
14 in his way’ and prevented timely filing.” *Holland*, 560 U.S. at 649 (quoting *Pace v.*
15 *DiGuglielmo*, 544 U.S. 408, 418 (2005)). Here, Petitioner presents no argument that he
16 is entitled to equitable tolling, and nothing in the record before this Court suggests that
17 Petitioner has met the requirements for the application of equitable tolling.

18 Petitioner suggests the Court should apply an exception to the statute of
19 limitations based on actual innocence. Dkt. 3 at 13. There is an equitable exception to
20 the statute of limitations for a credible showing of actual innocence. *McQuiggin v.*
21 *Perkins*, 569 U.S. 383, 386 (2013). But the Supreme Court has cautioned that tenable
22 actual innocence claims are rare. *Id.* “[A] petitioner does not meet the threshold
23 requirement unless he persuades the district court that, in light of the new evidence, no

1 juror, acting reasonably, would have voted to find him guilty beyond a reasonable
2 doubt." *Id.* (quoting *Schlup v. Delo*, 513 U.S. 298, 329 (1995)); *see also House v. Bell*,
3 547 U.S. 518, 538 (2006) (emphasizing that the *Schlup* standard is demanding and
4 rarely met). To make a credible claim of actual innocence, a petitioner must "support his
5 allegations of constitutional error with new reliable evidence — whether it be
6 exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical
7 evidence — that was not presented at trial." *Schlup*, 513 U.S. at 324.

8 Although Mr. Crews asserts that he qualifies for an actual innocence exception,
9 he does not identify or produce any new reliable evidence that would potentially have
10 altered the outcome of his criminal proceedings. Instead, he asserts he did not receive a
11 fair trial, a general claim without any new reliable evidence, which is inadequate to
12 establish actual innocence. *Schlup*, 513 U.S. at 324.

13 Mr. Crews' actual innocence claim therefore fails.

14 Finally, although Petitioner does not cite to *Martinez v. Ryan*, 566 U.S. 1 (2012),
15 the Court has considered Petitioner's general ineffective assistance of counsel claim.
16 Dkt. 3-1 at 3. *Martinez* is unavailing in this case because it does not excuse
17 untimeliness. In *Martinez*, the Supreme Court recognized a narrow means by which a
18 prisoner can show "cause" to excuse a state procedural default of a claim based upon
19 alleged ineffective assistance of counsel at trial. See *Martinez*, 566 U.S. at 8-9. *Martinez*
20 does not address or create an exception to the AEDPA statute of limitations.

21 The one-year state of limitations began to run on January 8, 2013. Mr. Crews has
22 not identified any impediment to filing that was removed, nor a new right made
23 retroactive by the Supreme Court affecting his case, nor a factual predicate to his

1 current claims that could not be discovered until later. Nor did petitioner file any other
2 petitions for state post-conviction or collateral review before the year was up that could
3 have tolled the statute of limitations. *Martinez* addresses procedural default, not
4 timeliness. *Martinez*, 566 U.S. at 11.

5 The petition should therefore be DISMISSED with prejudice as time barred.

6 EVIDENTIARY HEARING

7 The decision to hold an evidentiary hearing is committed to the Court's
8 discretion. *Schrivo v. Landigan*, 550 U.S. 465, 473 (2007). "[A] federal court must
9 consider whether such a hearing could enable an applicant to prove the petition's
10 factual allegations, which, if true, would entitle the applicant to federal habeas relief." *Id.*
11 at 474. In determining whether relief is available under 28 U.S.C. § 2254(d)(1), the
12 Court's review is limited to the record before the state court. *Cullen v. Pinholster*, 563
13 U.S. 170 (2011). A hearing is not required if the allegations would not entitle Petitioner
14 to relief under §2254(d). *Landigan*, 550 U.S. at 474. "It follows that if the record refutes
15 the applicant's factual allegations or otherwise precludes habeas relief, a district court is
16 not required to hold an evidentiary hearing." *Id.*; see *Pinholster*, 563 U.S. 170.

17 The Court finds it is not necessary to hold an evidentiary hearing here because
18 Mr. Crews' claims may be resolved on the existing state court record.

19 CERTIFICATE OF APPEALABILITY

20 A petitioner seeking post-conviction relief under § 2254 may appeal a district
21 court's dismissal of his federal habeas petition only after obtaining a certificate of
22 appealability from a district or circuit judge. A certificate of appealability may issue only
23 where a petitioner has made "a substantial showing of the denial of a constitutional
24 right." See 28 U.S.C. § 2253(c)(3). A petitioner satisfies this standard "by demonstrating
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that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under the above standard, this Court concludes that petitioner is not entitled to a certificate of appealability in this matter. This Court therefore **recommends that a certificate of appealability be denied.**

CONCLUSION

The Court should **deny** the petition for habeas corpus relief with prejudice.

All of petitioner's claims are time barred, and the Court should refuse to hear them. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this report to file written objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo* review by the district judge, see 28 U.S.C. § 636(b)(1)(C), and can result in a waiver of those objections for purposes of appeal. See *Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set the matter for consideration on January 23, 2025 as noted in the caption.

Dated this 8th day of January, 2025.

Theresa L. Fricke
Theresa L. Fricke
United States Magistrate Judge